

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

BERRY HILL CONSTRUCTION

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses
RSA 275: 21 VIII overtime

Employer: Berry Hill Construction, 473 Berry Road, Alexandria, VA 03222

Date of Hearing: February 18, 2014

Case No. 47081

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 3, 2013. The notice was sent to the employer and there was no written objection to the Wage Claim. The Notice of Hearing was sent to both parties on January 15, 2014.

The claimant testified that there were several areas to this Wage Claim. There was a claim for the bank fee of \$10.00 because of a check issued with insufficient funds. There was an overtime payment missing in the amount of \$5.00. The claimant also stated that there were two weeks in February of 2013 when he did not receive any pay. The week of February 2, 2013 he is due \$760.00 and for the week of February 9, 2013 he is due \$800.00.

The claimant also stated that his hourly rate was reduced without written notice. He was reduced by \$5.00 per hour for 156.5 hours. This part of the Wage Claim is for \$782.50. The claimant stated that because he never received a written notice of the hourly reduction, it is an illegal action and he should be paid. The claimant did say that he had a meeting with his employer about his job performance. The employer told him that his hourly rate was being reduced for a period of ninety days and then there would be another meeting.

For the two week period of no pay, the claimant stated that he worked and submitted time sheets. The claimant also said that there were other employees working those two weeks.

The employer testified that if he owed the \$10.00 bank fee and the \$5.00 overtime fee, he would pay them. He also testified that he had a meeting with the claimant about job performance and reduced his hourly rate by \$5.00 until a further review was held. The claimant received pay for those hours at the reduced rate.

The two weeks in question, the employer said that no employees worked. There is no record of anyone working and submitting time sheets. The employer has no record of the claimant working and did not know where he would have worked.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as employee expenses under the category of wages when the expenses are due and owing.

RSA 279:21 VIII. Those employees covered by the introductory paragraph of this section, with the following exceptions, shall, in addition to their regular compensation, be paid at the rate of time and one-half for all time worked in excess of 40 hours in any one week:

(a) any employee employed by an amusement, seasonal, or recreational establishment if:

- (1) It does not operate for more than 7 months in any calendar year; or
- (2) During the preceding calendar year, its average receipts for any 6 months of such year were not more than 33-1/3 percent of its average receipts for the other 6 months of such year. In order to meet the requirements of the subparagraph, the establishment in the previous year shall have received at least 75 percent of its income within 6 months. The 6 months, however, need not be 6 consecutive months.

(b) Any employee of employers covered under the provisions of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. section 201, et seq.); provided however, employers that pay any delivery drivers or sales merchandisers an overtime rate compensation

for hours worked in excess of 40 hours in any one week shall not calculate such overtime rate of compensation by the fluctuating workweek method of overtime payment under 29 C.F.R. section 778.114.

The law states when and how overtime is to be paid to non-exempt employees.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he met part of this burden.

The claimant was credible in his claim that he suffered a late fee because the employer issued a check that did not clear at the bank. The Wage Claim is valid in the amount of \$10.00 for the employee expense.

The Wage Claim is also valid in the amount of \$5.00 for overtime. The claimant said that he worked this time and was not paid. The employer testified that it could have been overlooked and so if it is due he will pay the amount.

The claim that there was \$5.00 per hour deducted without it being in writing is invalid. The employer was credible in stating that the claimant was in a meeting when the reduction was discussed. The reduction was because of the work product from the claimant and it was for a limited duration. The claimant knew of this reduction from the meeting and it was spelled out on every paycheck after that. This part of the Wage Claim is invalid.

The claim for two weeks of pay is invalid because the claimant did not prove if he worked those two weeks and where the work was performed. The employer was credible in the testimony that no employees worked those two weeks and there were no time cards submitted. This part of the Wage Claim is invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$15.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$15.00 within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 18, 2014

Original: Claimant
cc: Employer

TFH/all